IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6362 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHANA NAND

Versus

GOVERNMENT OF INDIA

Appearance:

1. Special Civil Application No. 6362 of 1991

MR JJ YAJNIK for Petitioner No. 1

MS PJ DAVAWALA for Respondent No. 1

MS PROMILA SAFAYA for Respondent No. 1,2-3

MR BB NAIK for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 18/08/2004

ORAL JUDGEMENT

1.0 The petitioner, by way of this petition, challenges the punishment order dated 4th June, 1990 passed by the respondent-authority whereby he was awarded sentence of reduction to the rank of Lance Naik (LNK) which came to be confirmed by the Dy.Inspector General, BSF, Gujarat by order dated 18-6-1990.

2.0 It is the case of the petitioner that before passing the said order of confirmation the petitioner was not afforded an opportunity of hearing and even the appellate authority has not assigned reasons while passing the order dated 24th July, 1990 produced at Annexure B to the petition.

3.0 Mr. Yagnik, learned Counsel for the petitioner has contended that the Inquiry Officer has without applying his mind, recorded the evidence and awarded the sentence without assigning any reason whatsoever.

3.1 It was also contended by Mr. Yagnik that the petitioner is deprived of his right to file a petition against the order in question as no such opportunity was afforded to him as required under Section 117 of the Border Security Force Act, 1968 which reads as under:

"117. REMEDY AGAINST ORDER, FINDING OR SENTENCE OF SECURITY FORCE COURT.

"(1) Any person subject to the this Act who considers himself aggrieved by any order passed by any Security Force Court may present a petition to such Security Force Court, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to regularity of any proceeding to which the order relates.

"(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any Security Force Court which has been confirmed, may present a petition to the Central Government, the Director General or any prescribed officer superior in command to the one who confirmed such finding or sentence and the Central Government, the Director General or the prescribed Officer, as the case may be, may pass order thereon as it or he thinks fit."

3.2 No opportunity was given to the petitioner. The petitioner could have objected at the relevant time before the authority if not open to raise this contention at belated stage.

4.0 The facts of the case as emerging from the record reveals that the charges against the petitioner are that the petitioner who was an Head Constable, Border Security Force at HQrs 142 Bn BSF on 8th September, 1989 at about 2115 hrs. used criminal force to Smt. Shobhanaben w/o. Constable Gopalbhai of his unit by pushing her on the bed and touching her breast, with intent to outrage her modesty.

4.1 From the evidence of the victim, it is clear that it is disgraceful on the part of disciplined force.

5.0 Having carefully scrutinized the entire record of the proceedings against the petitioner and the conclusions arrived at by the Competent Authority, I am of the firm opinion that looking to the fact that the petitioner is indulged in a criminal act of such a serious nature, no leniency can be shown to him.

5.1 Looking to the evidence on record misconduct having been established, no reasons are required to be assigned if proved guilty. In my view, the Competent Authority has rightly awarded the punishment in question which is just and proper, and hence, no interference is called for.

6.0 The petition, therefore, fails and is dismissed. Rule is discharged.

(K.S.Jhaveri,J.)

stanley-ksj.